



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

September 12, 2014

[REDACTED]

Re: DTE Energy
Case 07-CA-129514

Local 223, Utility Workers Union of
America (UWUA), AFL-CIO (DTE
Energy)
Case 07-CB-129520

Dear [REDACTED]:

This Office has carefully considered your appeal from the Regional Director's partial refusal to issue complaint. We deny the appeal.

Concerning the charge against the Employer, an employer's adverse employment actions are unlawful if motivated by employees' protected activities. See *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982). On appeal, you submitted documents to support allegations that the Employer retaliated against employees because of their protected activities by [REDACTED]

[REDACTED] However, the totality of the evidence obtained from the Regional Office's investigation disclosed that the Employer based its actions on the lawful business reasons it asserted and not on employees' protected activities. Because the Employer did not consider employees' protected activities in taking these actions, a violation was not established.

Regarding the charge against the Union, a union's actions or non-actions are unlawful if motivated by discriminatory, arbitrary, or bad faith reasons. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). A union has a wide range of reasonable discretion in representing employees. *Airline Pilots Assoc., Internat'l v. O'Neill*, 499 U.S. 65, 78 (1991). On appeal, you submitted documents to support allegations that a Union agent [REDACTED]

[REDACTED] However, the totality of the evidence obtained from the Regional Office's investigation revealed that Union agent's [REDACTED]

[REDACTED] Though the Union filed the grievance in August and it remains

unresolved, the evidence showed that the parties appear to be actively processing it. The evidence was insufficient to show that the Union based its conduct on an unlawful reason. Absent sufficient evidence of an unlawful motive, the allegations could not be sustained.

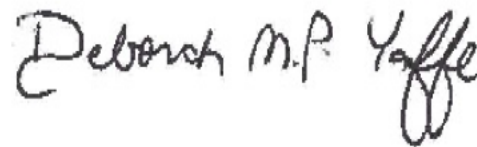
Accordingly, further proceedings on the appealed allegations are unwarranted.

The Regional Office will continue to process the remaining allegation which it found to have arguable merit.

Sincerely,


Richard F. Griffin, Jr.
General Counsel


By:





Deborah M.P. Yaffe, Director
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cc: TERRY MORGAN
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